

JORDAN
RAMIS PC
ATTORNEYS AT LAW

FILED

JUN 29 2012

SURFACE
TRANSPORTATION BOARD

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MANAGEMENT
SIB

June 26, 2012

Cynthia T. Brown
Chief of Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

232 515

ENTERED
Office of Proceedings
JUN 29 2012
Part of
Public Record

Re: *City of Milwaukie v. Oregon Pacific Railroad Company*
Docket No. FD35625
Petition for Declaratory Order
Our File No. 49979-70698

RONALD G. GUERRA

Dear Ms. Brown:

Admitted In.
Oregon

On behalf of the City of Milwaukie ("City"), I submit 10 copies of this Complaint for a Declaratory Ruling, plus supporting materials, along with a City check for the \$1400.00 filing fee.

Direct Dial
(503) 598-5540

E-mail
ron.guerra@jordanramis.com

The City requests that the Board waive the filing fee under 49 C.F.R. 1002.2(e)(1). The City is a local governmental entity authorized to request waiver of otherwise-applicable filing fees. In addition, waiver would serve the public interest. This case evaluates federal preemption in a case where a railroad is storing equipment and debris in a city street. The result of this case will clarify municipal authority to govern rights of way. The result will also clarify the legal premises for issues between the parties. Finally, the result may guide future cases involving other cities, or other roadways. The City believes such results will serve the public interest.

Thank you.

Sincerely,

JORDAN RAMIS PC

Ronald G. Guerra

Enclosures

cc: City of Milwaukie (via e-mail)
Richard Samuels (via US Mail)

FILE RECEIVED
JUN 29-2012
SURFACE
TRANSPORTATION BOARD

232515

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
JUN 29 2012
Part of
Public Record

CITY OF MILWAUKIE v. OREGON PACIFIC RAILROAD COMPANY

Docket No. FD35625

Submitted by:
Ronald G. Guerra
JORDAN RAMIS PC
Two Centerpointe Dr., 6th Fl.
Lake Oswego, OR 97035

FILED
JUN 29 2012
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
JUN 29 2012
SURFACE
TRANSPORTATION BOARD

June 26, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY OF MILWAUKIE (Oregon),

Complainant,

v.

OREGON PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. FD35625

COMPLAINT FOR DECLARATORY RULING

REQUEST FOR DECLARATORY RULING

1.

The City of Milwaukie, pursuant to 49 U.S.C. §10501 and 40 C.F.R. Part 1104 et seq., submits to the Surface Transportation Board (“STB” or “Board”) this request for a declaratory ruling that the City of Milwaukie’s right under local ordinances to order a railroad to remove debris and objects from the City of Milwaukie’s public roadways is not preempted by 49 U.S.C. §10101 et seq.

IDENTITY OF THE PARTIES

2.

Oregon Pacific Railroad Company (“OPRC”) is a short-haul railroad transportation company authorized by STB to operate in Oregon. Part of OPRC’s operations are conducted within the City of Milwaukie. OPRC has a train maintenance facility located at 9001 SE McBrod Avenue, Milwaukie, Clackamas County, Oregon 97222. This is the site of the property at issue herein. OPRC’s principal place of business is located at 28800 S. Hwy 213, Molalla,

Clackamas County, Oregon 97038 and its mailing address is P.O. Box 22548, Portland, Oregon 97269. The president of OPRC is Richard Samuels.

3.

The City of Milwaukie is a municipal corporation of the State of Oregon (hereinafter “City”), with a street address of 10722 SE Main Street, Milwaukie, Clackamas County, Oregon 97222.

JURISDICTIONAL STATEMENT

4.

The City seeks a declaratory ruling that 49 U.S.C. § 10501(b) does not preempt local municipal ordinances Milwaukie Municipal Code (“MMC”) 10.44.030 and MMC 8.04.120 as enforced against OPRC. STB has jurisdiction to interpret 49 U.S.C. § 10101 et seq. 49 U.S.C. § 10501(b); 5 U.S.C. § 554(e); 49 U.S.C. § 721(a).

FACTS

5.

OPRC’s property on SE McBrod Avenue is bordered in parts by a tall chain-link fence. OPRC’s property encompasses approximately .78 acre. The property within the fence and as described above is OPRC’s property. The area outside the fence is part of the public right of way, owned by the City of Milwaukie. Declaration of Timothy Salyers, Ex. A (photos of train maintenance facility), Ex. B (map including OPRC’s property); Ex. C (documents showing and describing the City’s property).

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6.

On the 9000 and 9100 blocks of SE McBrod Avenue, in the public right of way, OPRC has stored numerous rails, railroad ties, piles of gravel and other large items (“debris” or “items”). These items are on the City’s property. Further, rubbish from the rock piles migrates onto the roadway. Salyers Dec. Exs. A-C.

7.

Leaving the right of way obstructed and leaving debris and other items, including rock debris or rubbish, in the right of way may constitute a serious risk and hazard to the general public using the right of way by impairing visibility, creating a potential accident hazard, and littering the public right of way with potentially dangerous debris and items. Salyers Dec. ¶¶ 4, 6, Ex. D (MMC sections 8.04.120 and 10.44.030); Rice Dec. ¶¶ 9-10. Leaving items in the roadway that are unexpected impairs traffic safety. Unexpected items in the roadway cause at least two driver responses that impair traffic safety. First, when drivers encounter an unexpected item, the discovery has an effect on driver attention. The driver’s cognitive abilities are directed to the item to figure out what the item is. When the driver’s thinking is involved in this exercise it temporarily reduces the ability of the driver to pay attention to other driving needs, such as maintaining proper speed, lane of travel, and presence of pedestrians. Second, under the natural fear of the unknown, a driver is prone to interpret an unexpected or unknown item as something to avoid, thus encountering an unexpected item may have the effect of causing a driver to veer away from the item, even if—upon reflection—the item is not dangerous. The more an unexpected item is perceived as a danger—due perhaps to its size, or even just its bizarreness—the greater this avoidance reaction can be. Rice Dec. ¶ 9.

The debris and other items left by OPRC on McBrod Avenue are an example of unexpected items, impairing driver safety. The items pose a potential impaling threat to cars and bicycles, a tripping hazard for pedestrians, an interference for bicyclists and pedestrians, an interference to vehicle parking, a crash hazard for cars and bicyclists, a potential dangerous area for children, and a potential source of rubbish that moves into the road itself, causing braking and turning difficulties for cars and bicycles. Rice Dec. ¶ 10.

8.

Under its police power, the City has the right to protect the health and safety of the public. Salyers Dec. ¶¶ 5-6, Ex. D.

9.

By placing and leaving debris and items in the right of way, OPRC has violated Milwaukie Municipal Code Health and Safety regulation 8.04.120(A), which states:

No person may throw, dump, or deposit upon public or private property any injurious or offensive substance or any kind of rubbish, trash, debris, or refuse which would mar the appearance, create a stench, or detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle, or person traveling upon a public way.

10.

By placing and leaving debris and items in the right of way, OPRC has violated Milwaukie Municipal Code Vehicles and Traffic regulation 10.44.030, which states:

Except as provided by this title or any other ordinance of the City, no person shall place, park, deposit, or leave upon any street or other public way, sidewalk, or curb any article or thing or material which in any way prevents, interrupts, or obstructs the free passage of pedestrian or vehicular traffic, or obstructs a driver's view of traffic or official traffic signs and signals. No person shall blockade or cause to be blockaded in any manner any street, sidewalk, or public way, except that a special permit may be obtained from the City Manager or designated appointee when the

blockage is determined to be temporary, for a lawful purpose, and will not lead to a breach of peace.

11.

On or about October 18, 2011, the City sent a letter to OPRC stating that the debris was not allowed on the public right of way and that OPRC was violating City ordinances MMC 10.44.030 and MMC 8.04.120. Salyers Dec. ¶ 7, Ex. E.

12.

On November 1, 2011, the City issued Oregon Uniform Citation and Complaint Nos. 26151A and 26152A ("Citation") to OPRC for the ordinance violations listed above. Salyers Dec. ¶ 8, Ex. F.

13.

At a hearing on the Citation in the City Municipal Court on November 30, 2011, OPRC did not appear and the City moved the Court for an Order of Default and Default Judgment. The Court granted the City's motion and entered an Order of Default and a Default Judgment on the Citation against OPRC for \$48,000.00 plus \$200.00 in costs and assessments for a total default judgment of \$48,200.00. On December 1, 2011, the City's Municipal Court Clerk notified OPRC by mail of the entry of the default judgment, the amount of the judgment and that payment was due on or before January 3, 2012 to the court. Salyers Dec. ¶ 9, Ex. G.

14.

On December 7, 2011, the City again cited OPRC for continuing violation of the same ordinances in the Citation by issuing Oregon Uniform Citation and Complaint Nos. 26154A and 26155A ("Citation II"). A hearing date on Citation II was noticed for January 4, 2012, at 2:00 p.m. On December 15, 2011, OPRC submitted a letter to the City's Municipal Court stating that

OPRC was pleading not guilty to Citation II and requesting that the matter be set for trial. This matter is set for trial on July 23, 2012. Salyers Dec. ¶ 10, Exs. H and I.

15.

On or about December 27, 2011, OPRC sent a letter to the City's Municipal Court stating that "[m]unicipal interference with railroad operations is pre-empted by USC 10501(b); therefore, the City has no jurisdiction over these matter [sic] as they apply to Interstate Commerce." Salyers Dec. ¶ 11, Ex. I.

16.

The citations issued by the City and its attempts to require the railroad to remove the debris and items are attempts by the City to fairly enforce its Health and Safety and Vehicles and Traffic regulations.

17.

LEGAL ANALYSIS

The City's right to enforce the ordinances and keep its roadways clear to protect the public is not preempted by 49 U.S.C. 10501(b) because the enforcement of the ordinances is not related to the "rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers[.]" The effect, if any, of the City's enforcement of the ordinances described above, on OPRC and the federal rules and laws regulating railroads and railways, is merely peripheral.

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STB is charged with the exclusive jurisdiction over “transportation by rail carriers.”

49 U.S.C. § 10501(b). STB has jurisdiction over:

“(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

“(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to the regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.”

Transportation includes:

“(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

“(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.” 49 U.S.C. § 10102(9).

A “rail carrier” is “a person providing common carrier” railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation. 49 U.S.C. § 10102(5).

The STB jurisdiction only preempts State or local jurisdiction when State or local laws attempt to regulate, manage or govern rail transportation. *Florida East Coast Ry. v. City of West Palm Beach*, 266 F.3d 1324, 1331 (11th Cir. 2001) (citations omitted.). State and local laws that

have a “more remote or incidental effect on rail transportation[]” are not preempted. *Id.* See H.R. Rep. 104-422, *reprinted in* 1995 U.S.C.C.A.N. 850, 852 (STB jurisdiction does not preempt State and Federal law generally).

Local safety, fire, health, plumbing, or construction regulations will only rarely interfere with a railroad’s operations. *Village of Ridgefield Park v. New York, Susquehanna & Western Ry. Corp.*, 163 N.J. 446, 750 A.2d 57, 66 (N.J. Sup. Ct. 2000). Only “unreasonable” burdens on interstate commerce are superseded. Where the activity regulated is only a peripheral concern of federal law, it is not preempted. *Cities of Auburn and Kent, WA—Petition for Declaratory Order—Burlington Northern Railroad Company—Stampede Pass Line*, STB Finance Docket No. 33200, p. 8 (July 2, 1997) (*Cities of Auburn and Kent*) (state or local entity can fine or penalize railroad for dumping waste and can require railroad to bear cost of disposing of waste).

In *Cities of Auburn and Kent*, the STB stated:

Moreover, as explained in *King County* and the Secretary’s informal opinion, not all state and local regulations that affect interstate commerce are preempted. A key element in the preemption doctrine is the notion that only “unreasonable” burdens, *i.e.*, those that “conflict with” Federal regulation, “interfere with” Federal authority, or “unreasonably burden” interstate commerce, are superseded. The courts generally presume that Congress does not lightly preempt state law. . . . Also, preemption does not deprive the states of the “power to regulate where the activity regulated [is] a merely peripheral concern” of Federal law.

At the same time, we agree with the Secretary’s informal opinion that there are areas with respect to railroad activity that are reasonably within the local authorities’ jurisdiction under the Constitution. For example, even in cases where we approve a construction or abandonment project, a local law prohibiting the railroad from dumping excavated earth into local waterways would appear to be a reasonable exercise of local police power. Similarly, as noted by the Secretary, a state or local government could issue citations or seek damages if harmful substances were discharged during a railroad construction or upgrading project.

A railroad that violated a local ordinance involving the dumping of waste could be fined or penalized for dumping by the state or local entity. The railroad also could be required to bear the cost of disposing of the waste from the construction in a way that did not harm the health or well being of the local community. We know of no court or agency ruling that such a requirement would constitute an unreasonable burden on, or interfere with, interstate commerce. Therefore, such requirements are not preempted.

Cities of Auburn and Kent, p. 8-10 (emphasis added).

Under *Cities of Auburn and Kent*, the City can fine and penalize OPRC's dumping of materials on City property. The materials in question appear to consist of track parts: rails, ties, and gravel, perhaps for ballast. The presence of these materials in the right-of-way makes the street less useful and, in fact, increases danger to the motoring public by distracting drivers from the task of operating vehicles. Enforcement of the ordinances in question are not directed at OPRC's rates, classifications, rules, practices, routes, services or facilities, or other Federal interest, because nothing about the City's enforcement affects OPRC's ability to own or use such items in the City of Milwaukie: the railroad simply cannot store or leave the items in the public right-of-way.

Even assuming that the items are valuable railroad property, that characteristic changes when the items are placed in the street. What may have been useful rail now becomes a hazard, and nothing about Federal law requires the City to tolerate such a hazard. Indeed, if such items reach the street—as the gravel appears to have done on its own, and as could happen with the Jersey barriers or other items if jarred or fragmented by a vehicle collision—the items or their fragments can create hazardous conditions, as items driven over may bounce or fly and hit windshields, bicyclists, or pedestrians. Eventually, these items disperse when driven over by cars, thus the items become nothing more than rubbish.

The City is enforcing the ordinances for safety reasons because leaving the right-of-way obstructed or leaving and scattering rubbish and composting on the right of way could present a serious risk or hazard to the general public as they use or navigate SE McBrod Avenue. *See Rice Dec. ¶¶ 9-11.* MMC 8.04.120 and 10.44.030 are ordinances of general applicability to any person or entity within the City. They are not directed at or limited to railroads operating within the City and are not directed to OPRC's use of its own property. The enforcement, via fines, penalties, or seeking OPRC's removal of the debris, rubbish in the road, and other items, does not affect the railway lines. The applicability of the ordinances to the railroad and any impact on federal railway laws is peripheral, at most. Neither the ordinance requirements nor the enforcement actions taken do or could significantly burden interstate commerce.

RELIEF REQUESTED

19.


For the reasons stated above, the City requests that the Board find 1) that the City's enforcement of the ordinances is for the purpose of protecting the public and ensuring their health and safety; 2) that the City's enforcement does not unreasonably burden interstate commerce; 3) that the actions taken by the City to enforce its ordinances, by imposing fines and penalties or requiring removal of the debris, rubbish, and other items, are fair; 4) that the City's enforcement of the ordinances is peripheral to or of no effect on the railroad's activities that are governed by STB and federal rules and laws; and 5) that the City's use of its police power to abate obstruction of traffic and the scattering of rubbish and other items on or near a city street and the public right of way is not preempted by federal laws regulating railroads and rail carriers under 49 U.S.C. § 10101 et seq.

20.

The City requests that the Board declare that the municipal ordinances MMC 10.44.030 and MMC 8.04.120 and the City's enforcement of these ordinances are not preempted by 49 U.S.C. 10501(b) or STB/ICCTA laws and rules, and, therefore, the City may enforce these ordinances against OPRC without violating federal railway laws.

Dated this 26th day of June 2012.

JORDAN RAMIS PC
Attorneys for Complainant City of
Milwaukie

By: 

Ronald G. Guerra, OSB # 943272
ron.guerra@jordanramis.com

Trial Attorney: Ronald G. Guerra, OSB # 943272

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, I served a true and correct copy of the foregoing *Complaint for Declaratory Ruling* on:

Richard Samuels
Oregon Pacific Railroad Company
9001 SE McBrod Ave
Milwaukie OR 97222
Facsimile: (503) 659-6546

- ☒ by first class mail, postage prepaid.
- ☐ by hand delivery.
- ☐ by facsimile transmission.
- ☐ by facsimile transmission and first class mail, postage prepaid.
- ☐ by electronic transmission and first class mail, postage prepaid.

DATED: June 26, 2012.



Ronald G. Guerra, OSB # 943272
Attorney for Complainant City of
Milwaukie

232 515

BEFORE THE

SURFACE TRANSPORTATION BOARD

CITY OF MILWAUKIE (Oregon),

Complainant,

v.

OREGON PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. FD35625

DECLARATION OF JASON RICE

I, Jason Rice, hereby declare:

1. I make this declaration based upon my personal knowledge, and I am competent to testify to the matters stated in this declaration. I make this declaration in support of Complainant City of Milwaukie's *Complaint for Declaratory Ruling*. I am a civil engineer for the City of Milwaukie, Oregon and have held my present position since July 2010.

2. I have a B. S. in Forestry Engineering, which I obtained at Oregon State University. I took an additional transportation-focused course at Portland State University. I am a registered civil engineer in the State of Oregon; my engineering stamp number is 74479PE. I am also a certified general inspector for the Oregon Department of Transportation, certification number 48812. I am a member of the American Public Works Association.

3. My job is a professional engineering position in which I serve as a project manager and provide technical assistance to the Engineering Director for the City of Milwaukie.

4. As part of my daily work, I review and advise others regarding traffic safety issues, including clear vision issues for roadways and application of relevant city code requirements for right of ways. I am also responsible for reviewing plan sets for development projects and reviewing traffic studies.

5. From my education and experience, I know that when designing a new roadway and, in turn its roadside spaces, or evaluating an existing roadway, engineers consult a manual titled the Roadside Design Guide (“Guide”). This document is nationally recognized, as it was created by the American Association of State Highway and Transportation Officials (AASHTO) under the advice of the Federal Highway Administration (FHA), Transportation Research Board (TRB) and the National Cooperative Highway Research Program (NCHRP). Currently this document is in its 3rd edition (2006).

6. The intent of the Guide “is to present the concepts of roadside safety to the designer in such a way that the most practical, appropriate, and beneficial roadside design can be accomplished for each project.” AASHTO, Roadside Design Guide, AASHTO, Washington, D.C., 2006, p. 1-1.

7. The Guide also contains a safety statistic that directly relates to the presence of materials on the road in this case. According to the Guide, “About thirty percent, or almost one in every three fatalities, are the result of a single vehicle run-off-the-road crash. These figures mean that the road side environment comes into play in a very significant percentage of fatal and serious injury crashes.” AASHTO, Roadside Design Guide, AASHTO, Washington, D.C., 2006, p. 1-1.

8. Drivers expect certain items within the roadway, including but not limited to utility poles, sign supports, guard rails, and barricades. The Guide supplies a process for safely placing such items in the roadway, which are present in the road for purposes of safety and providing basic services to motorists.

9. In my opinion, there is a difference in motorist perception and reaction to items they expect in the roadway, such as the items described in paragraph 7, above, and items that are

unexpected. The difference is that unexpected items cause at least two driver responses that impair traffic safety. First, when drivers encounter an unexpected item, the discovery has an effect on driver attention. The driver's cognitive abilities are directed to the item to figure out what the item is. When the driver's thinking is involved in this exercise it temporarily reduces the ability of the driver to pay attention to other driving needs, such as maintaining proper speed, lane of travel, and presence of pedestrians. Second, under the natural fear of the unknown, a driver is prone to interpret an unexpected or unknown item as something to avoid, thus encountering an unexpected item may have the effect of causing a driver to veer away from the item, even if—upon reflection—the item is not dangerous. The more an unexpected item is perceived as a danger—due perhaps to its size, or even just its bizarreness—the greater this avoidance reaction can be.

10. On May 8, 2012, I visited the portions of McBrod Avenue on which the City wishes to enforce its Ordinances involving the defendant. I have attached images taken during my visit of each of the items I believe is described as “unexpected,” along with potential dangers posed by each obstruction:

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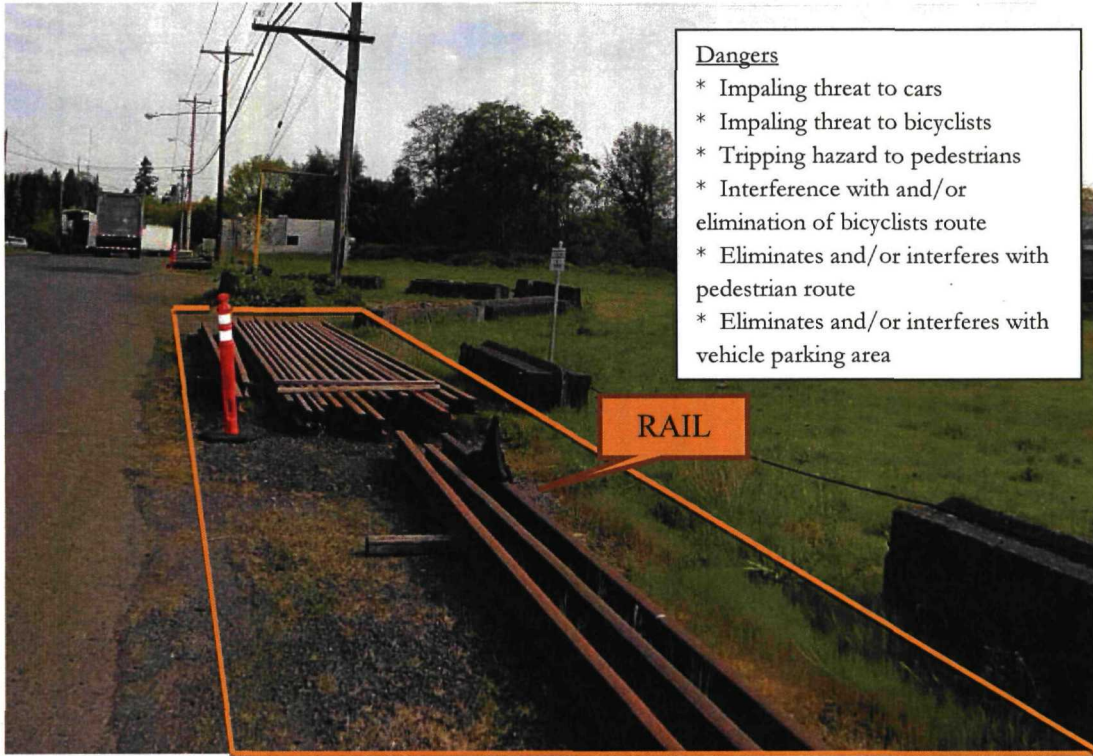
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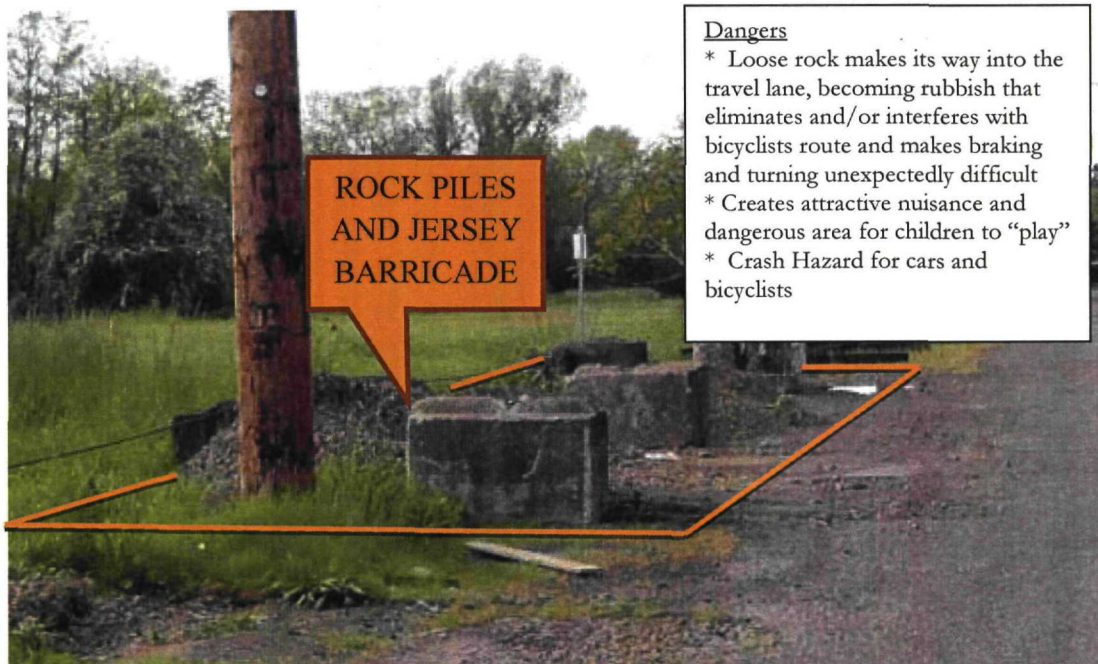
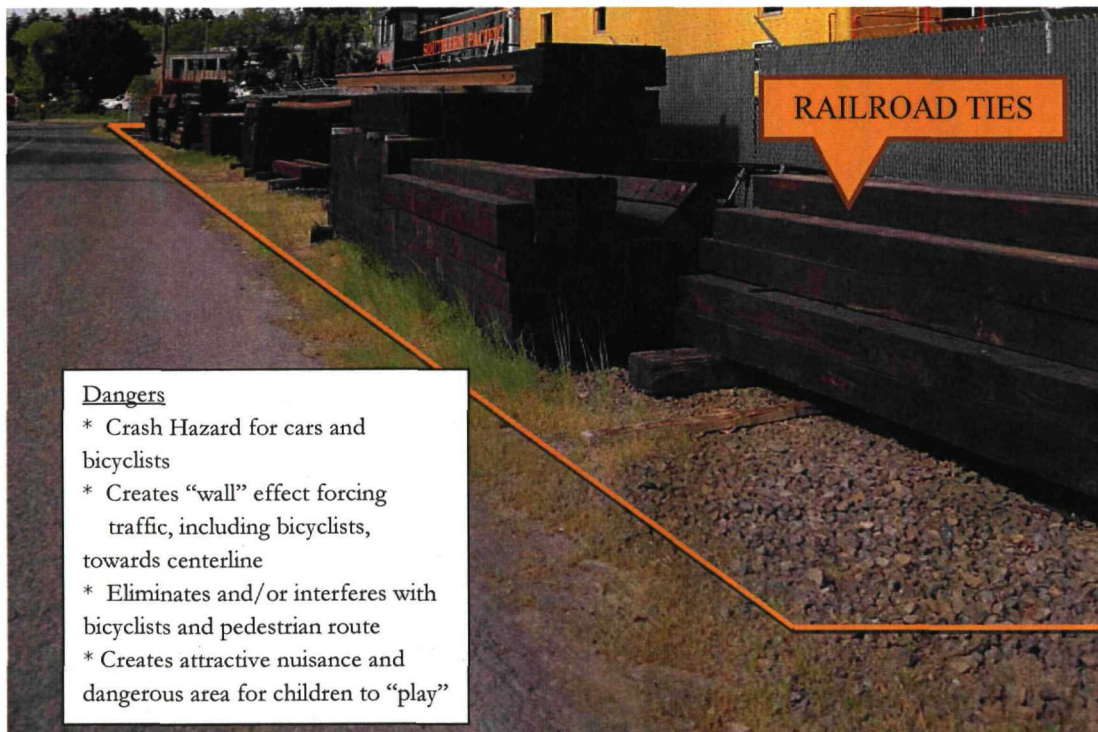
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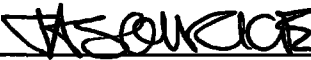
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11. It is my opinion as the City of Milwaukee’s Civil Engineer that the material depicted above should be immediately removed to provide the highest level of safety possible for the public use on McBrod Avenue.

I, Jason Rice, DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT. FURTHER, I CERTIFY THAT I AM QUALIFIED AND
AUTHORIZED TO FILE THIS DECLARATION ON JUNE 18, 2012.

By: 
Jason Rice
Transportation Engineer
City of Milwaukie

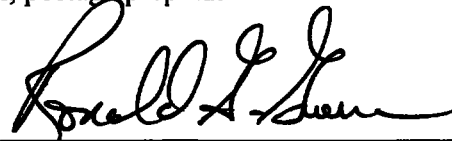
CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, I served a true and correct copy of the foregoing Declaration of Jason Rice in Support of the City of Milwaukie's *Complaint for Declaratory Ruling* on:

Richard Samuels
Oregon Pacific Railroad Company
9001 SE McBrod Ave
Milwaukie OR 97222
Facsimile: (503) 659-6546

- ☒ by first class mail, postage prepaid.
- ☐ by hand delivery.
- ☐ by facsimile transmission.
- ☐ by facsimile transmission and first class mail, postage prepaid.
- ☐ by electronic transmission and first class mail, postage prepaid.

DATED: June 26, 2012.



Ronald G. Guerra, OSB # 943272
Attorney for Complainant City of
Milwaukie

232515

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY OF MILWAUKIE,

Complainant,

v.

OREGON PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. FD35625

DECLARATION OF TIMOTHY SALYERS

I, Timothy Salyers, hereby declare:

1. I make this declaration based upon my personal knowledge, and I am competent to testify to the matters stated in this declaration. I make this declaration in support of Complainant the City of Milwaukie's *Complaint for Declaratory Ruling*. I am the Code Compliance Coordinator for the City of Milwaukie.

2. Oregon Pacific Railroad Company's ("OPRC") property on SE McBrod Avenue is bordered in parts by a tall chain-link fence. OPRC's property encompasses approximately 0.78 acre. The property within the fence and identifiable on Exhibit B as .78 acres is OPRC's property. Attached hereto as Exhibit A are true and correct copies of photographs of OPRC's train maintenance facility. Attached hereto as Exhibit B is a map including OPRC's property.

3. The area outside the fence, identified as SE McBrod Avenue, is part of the public right of way, owned by the City of Milwaukie ("City"). Attached hereto as Exhibit C are true and correct copies of documents showing the City's ownership of SE McBrod Avenue.

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4. On the 9000 and 9100 blocks of SE McBrod Avenue, in the public right of way, OPRC has stored or left numerous rails, railroad ties, piles of gravel and other large items ("debris" or "items"). These items are on the City's property. Further, rubbish from the rock piles migrates onto the roadway. See Exhibit A, which shows these items on the City's property.

5. Leaving the right of way obstructed or leaving debris or other items, including rock debris or rubbish, in the right of way creates a serious risk and hazard to the general public using the right of way.

6. Under its police power, the City has the right to protect the health and safety of the public.

7. True and correct copies of Milwaukie Municipal Code Health and Safety regulation 8.04.120(A) and Vehicles and Traffic regulation 10.44.030 are attached hereto as Exhibit D.

8. On or about October 18, 2011, the City sent a letter to OPRC that the debris was not allowed on the public right of way and that OPRC was violating City ordinances MMC 10.44.030 (obstruction of traffic) and MMC 8.04.120 (scattering rubbish and composting). A true and correct copy of the letter is attached hereto as Exhibit E.

9. On November 1, 2011, the City issued Oregon Uniform Citation and Complaint Nos. 26151A and 26152A ("Citation"). True and correct copies of the citations are attached hereto as Exhibit F.

10. At a hearing on the Citation in the City Municipal Court on November 30, 2011, OPRC did not appear and the City moved the Court for an Order of Default and Default Judgment. The Court granted the City's motion and entered an Order of Default and a Default Judgment on the Citation against OPRC for \$48,000.00 plus \$200.00 in costs and assessments


for a total default judgment of \$48,200.00. On December 1, 2011, the City's Municipal Court Clerk notified OPRC by mail of the entry of the default judgment, the amount of the judgment and that payment was due on or before January 3, 2012 to the court. True and correct copies of the hearing documents, default order and default judgment, and the City's letter to OPRC regarding the default judgment are attached hereto as Exhibit G.

11. On December 7, 2011, the City again cited OPRC for continuing violation of the same ordinances in the Citation by issuing Oregon Uniform Citation and Complaint Nos. 26154A and 26155A ("Citation II"). A hearing date on Citation II was noticed for January 4, 2012, at 2:00 p.m. On December 15, 2011, OPRC submitted a letter to the City's Municipal Court stating that OPRC was pleading not guilty to Citation II and requesting that the matter be set for trial. This matter has been set for trial on July 25, 2012. True and correct copies of the citation and notice of hearing are attached hereto as Exhibit H. A true and correct copy of OPRC's December 15, 2011 letter is attached hereto as Exhibit I.

12. On or about December 27, 2011, OPRC sent a letter to the City's Municipal Court stating that "[m]unicipal interference with railroad operations is pre-empted by USC 10501(b); therefore, the City has no jurisdiction over these matter [sic] as they apply to Interstate Commerce." Exhibit I.

I, Timothy Salyers, DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. FURTHER, I CERTIFY THAT I AM QUALIFIED AND AUTHORIZED TO FILE THIS DECLARATION ON JUNE 20, 2012.

By: _____


Timothy Salyers
Code Compliance Coordinator,
City of Milwaukie

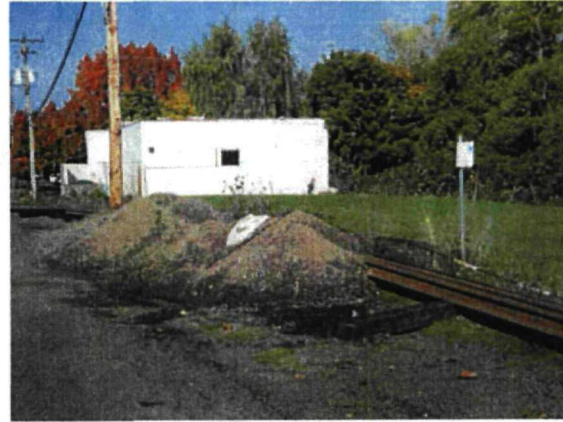
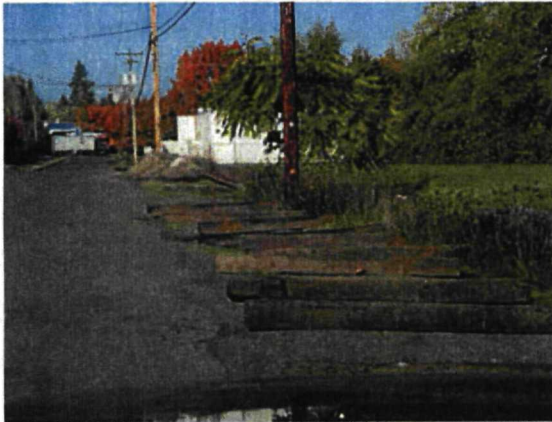
Group A

Citation 26151A (Failed to appear)

Pictures 10/9/2011

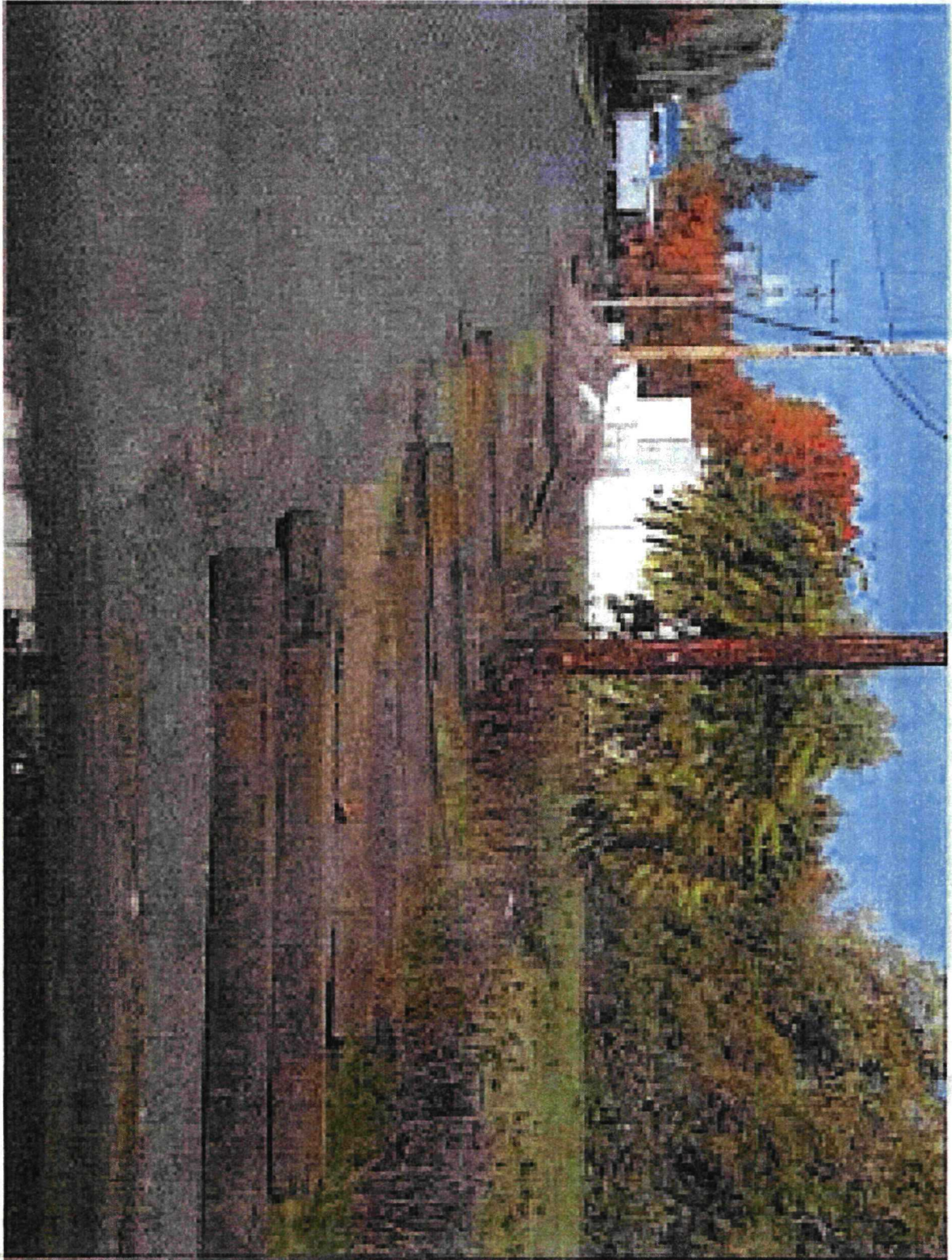


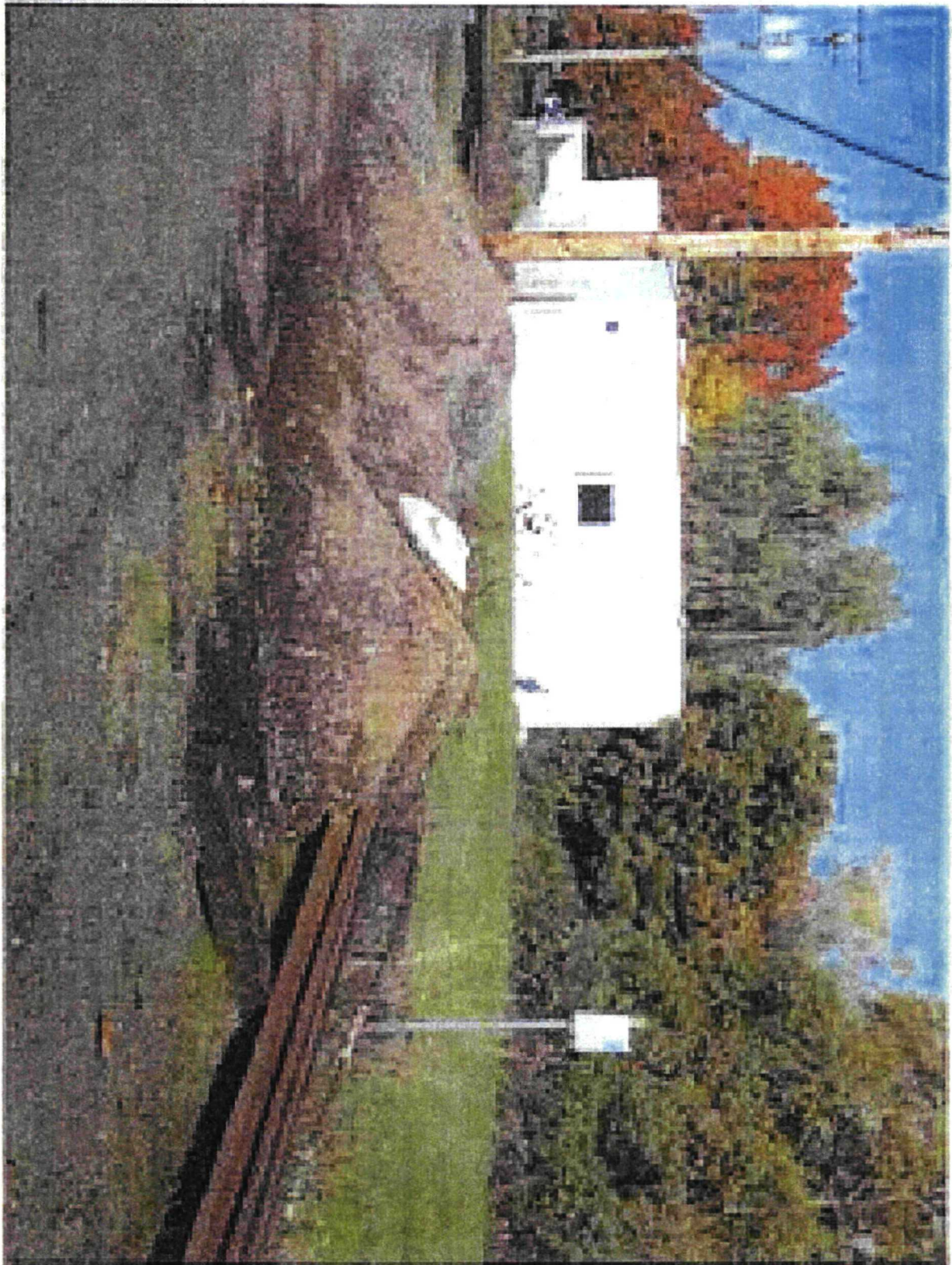
Pictures 11/1/2011











Group A

Citation 26154A (pending)

Pictures 12/6/2011



Group B

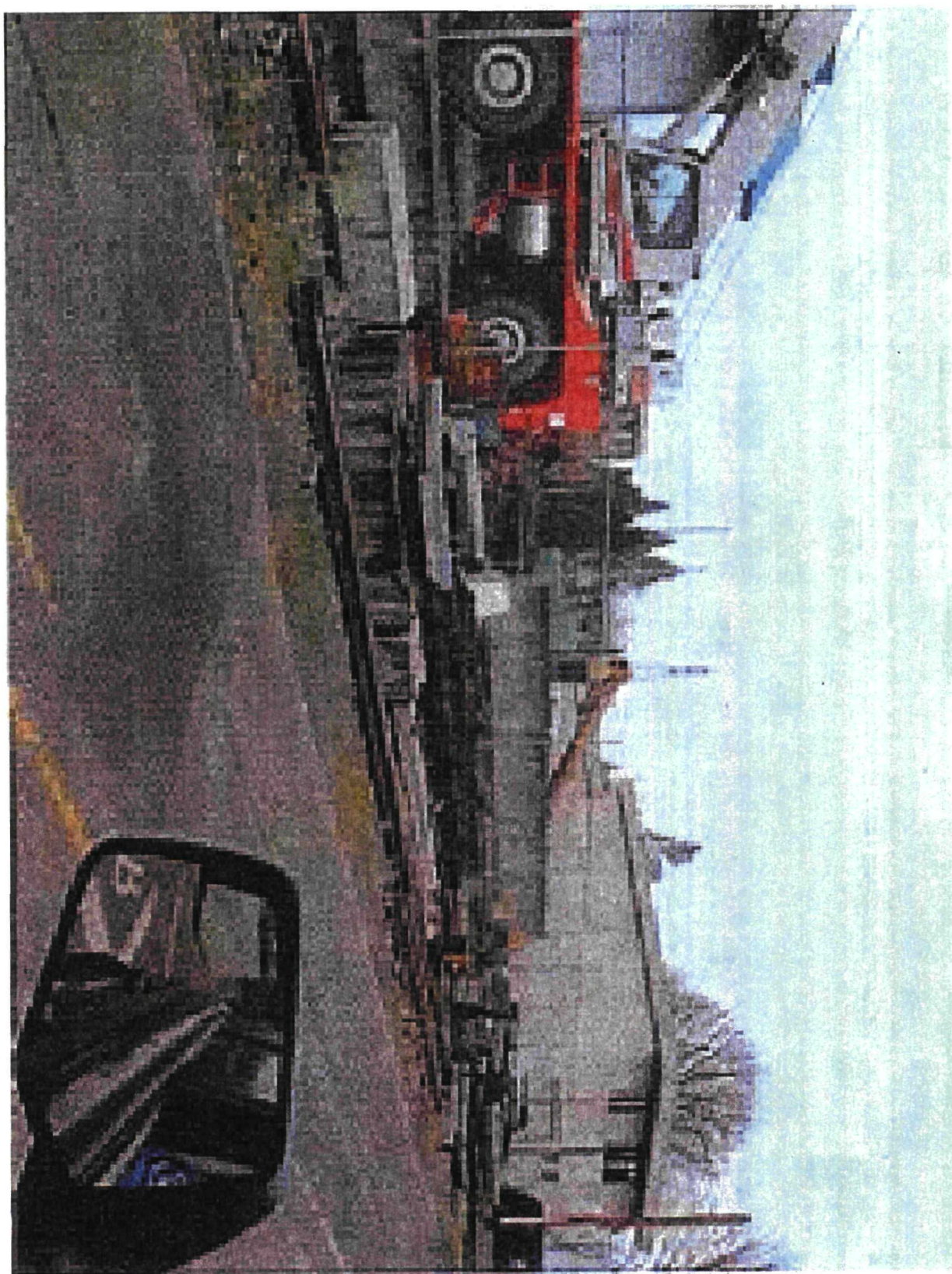
Citation 26155A (pending)

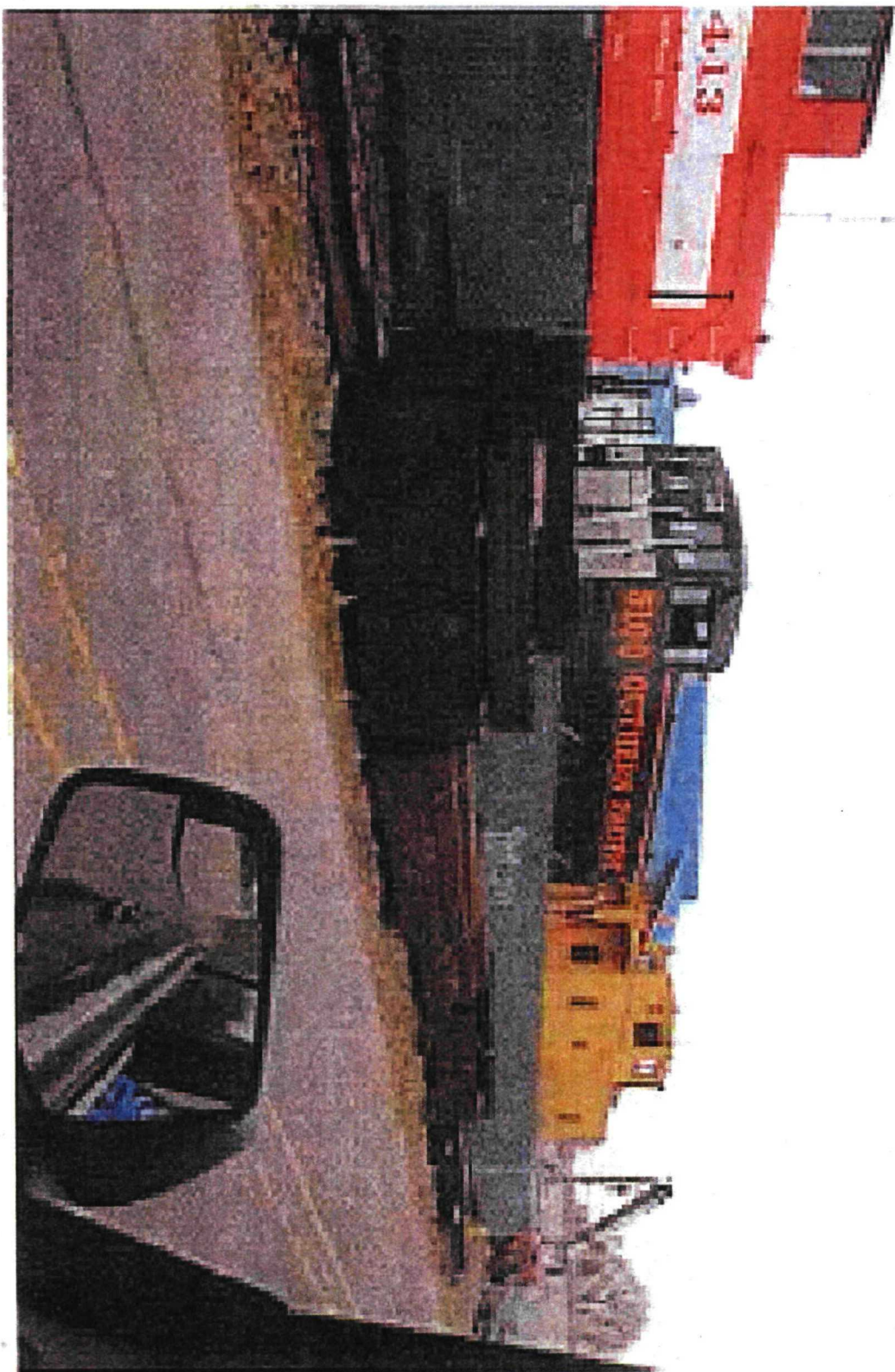
Pictures 12/6/2011







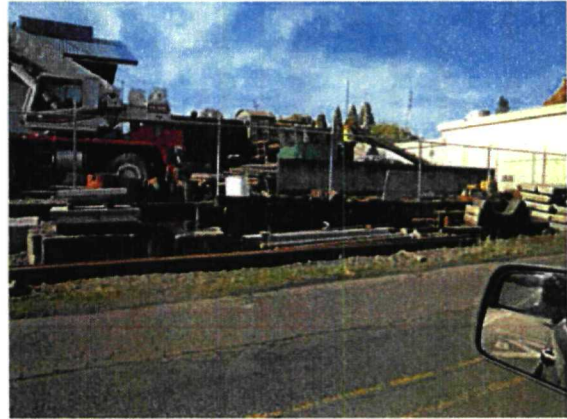
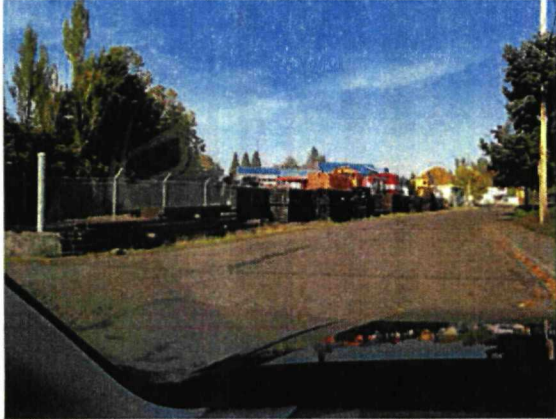


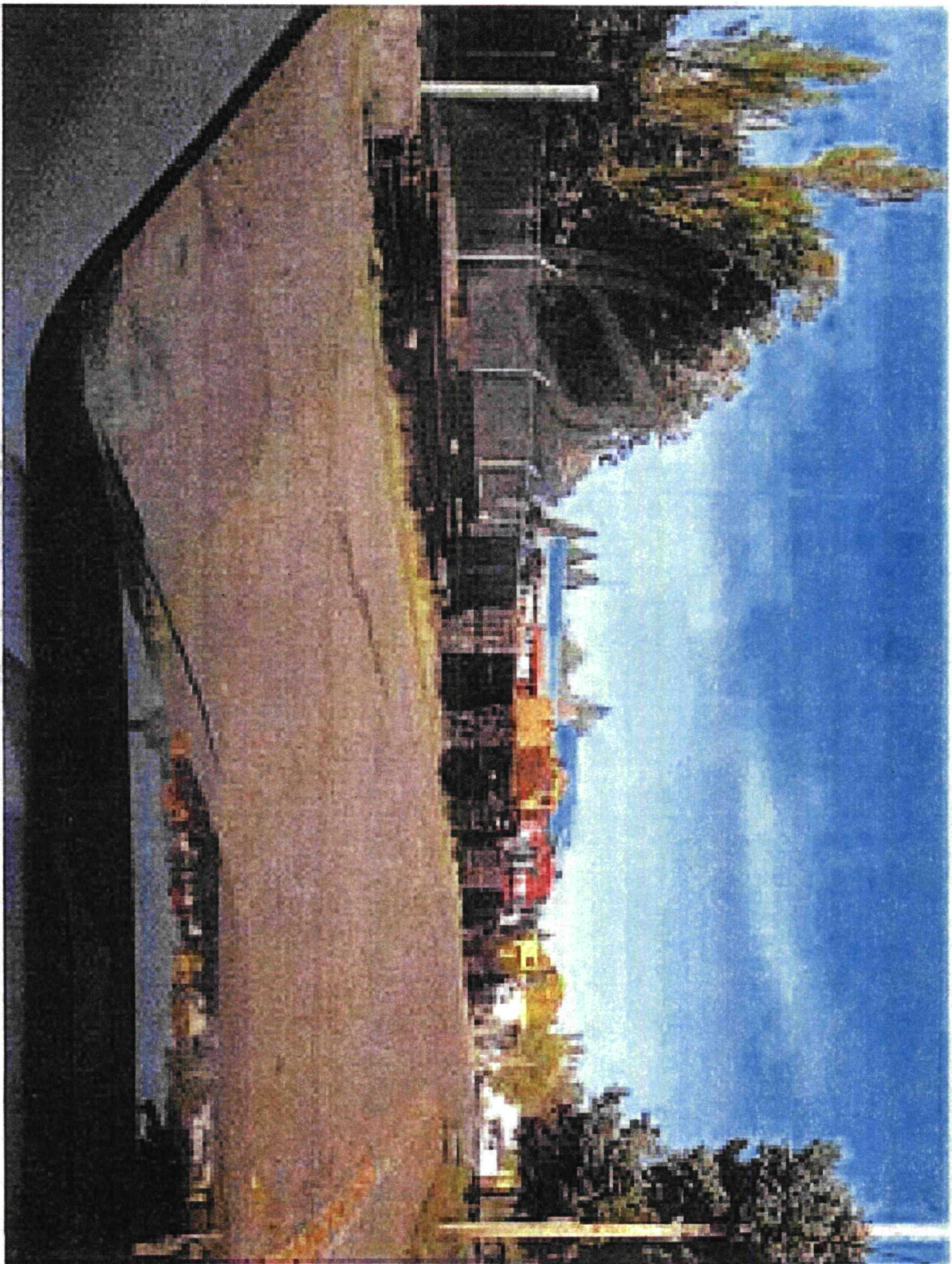


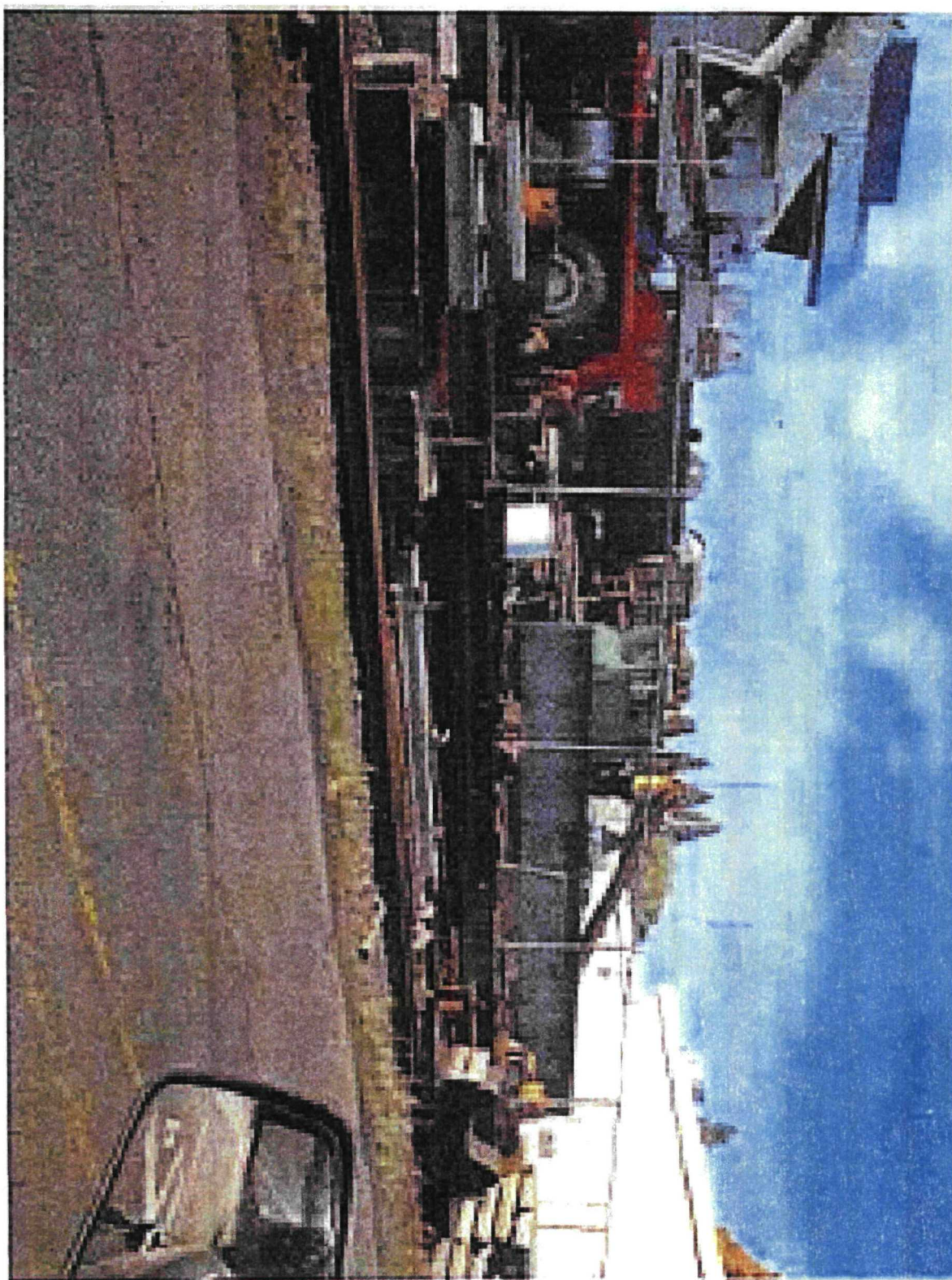
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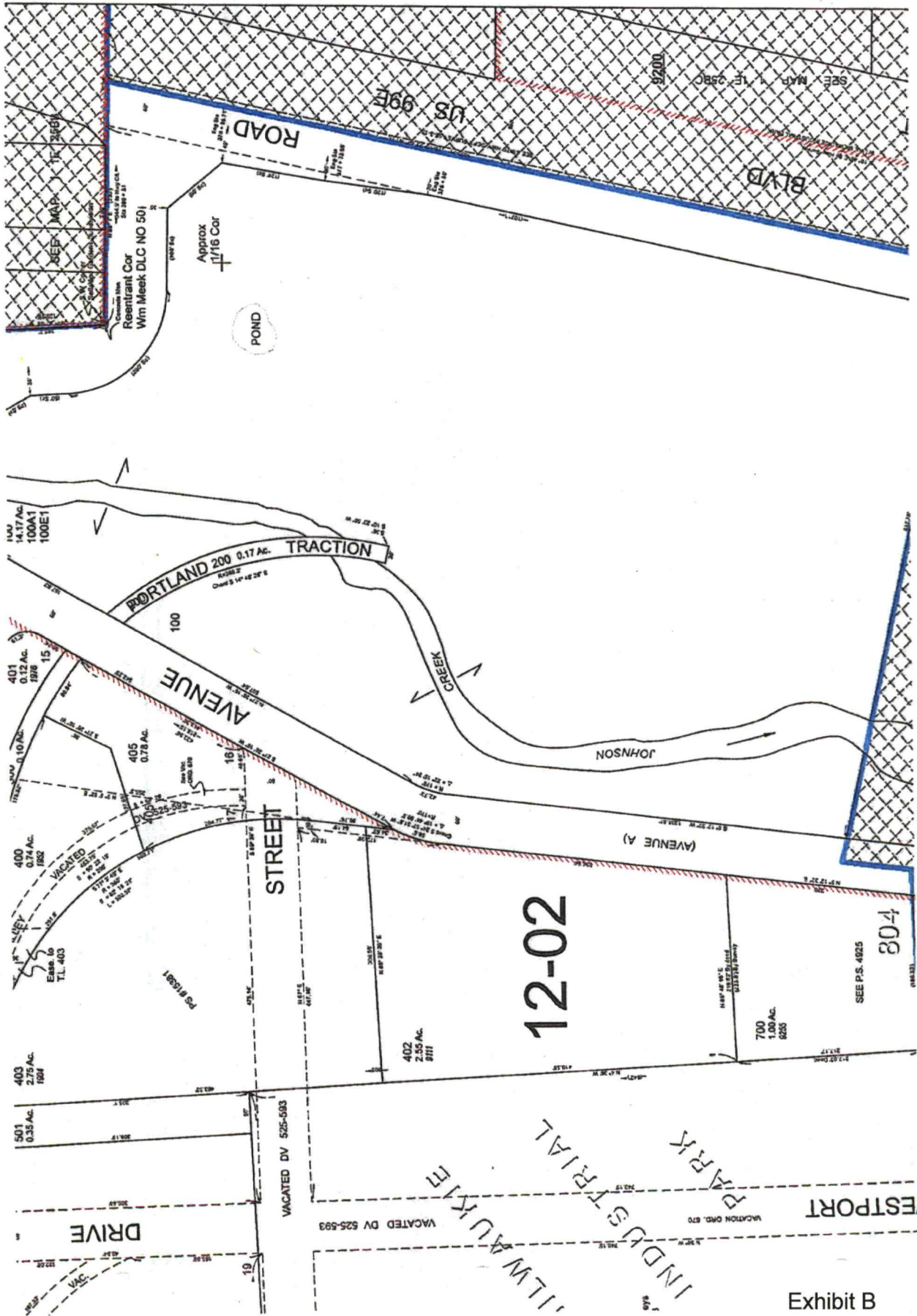
Citation 26152A (Failed to appear)

Pictures 11/1/2011









15512

RESOLUTION NUMBER 4-1955

BE IT RESOLVED that the name of that area lying within the northerly part of the City of Milwaukie, Oregon, and comprising a part of the Wm. Meek and wife D.L.C. which area has heretofore been commonly known and described as "Kellogg Park" BE AND THE SAME IS HEREBY CHANGED FROM "KELLOGG PARK" TO "MILWAUKIE INDUSTRIAL PARK"

BE IT FURTHER RESOLVED that notice and copies of this resolution be furnished to the County Surveyor of Clackamas County, Oregon and other State and County officials to the end that any public record, and particularly that record of the dedication of streets within said area may be altered so as to conform to the change of name affected by this resolution.

STATE OF OREGON)
County of Clackamas) ss

I, ELLAN MARTIN, the duly appointed Recorder of the City of Milwaukie Oregon, hereby certify that the foregoing Resolution Number 4-1955 was passed by the Council of the City of Milwaukie at their regular meeting of August 22, 1955.

Ellan Martin
Recorder.

DATED THIS 20th DAY OF SEPTEMBER, 1955

SEAL DOCUMENT 15512 RECORDED SEP 30 1955 9:53 A M. GUY H. PACE COUNTY CLERK

✓
15512³⁶ X
PHOTOSTAT

Resolution No 4-1955
Changing Name of
Kenney's Park to
Milwaukie Industrial
Park.

STATE OF OREGON, } ss.
County of Clatsop,

I, Guy H. Pace, County Clerk, Ex-Officio Recorder of Conveyances and Ex-Officio Clerk of the Circuit Court of the State of Oregon, for the County of Clatsop, do hereby certify that the within instrument of writing was received for record and recorded in the records of

~~DEED~~ of said County at

1955 SEP 30 AM 9 53

In Book VOL 501 PAGE 738

Witness my hand and seal of said Court
affixed.
GUY H. PACE,
County Clerk,

Maybelle Rogers
Deputy.
Recording Certificate

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE PUBLIC HOUSING ADMINISTRATION IS THE OWNER OF THE FOLLOWING DESCRIBED LAND SITUATE IN THE CITY OF MILWAUKEE, CLACKAMAS COUNTY, OREGON.

KELLOGG PARK

A PART OF THE WILLIAM MEER DONATION LAND CLAIM NO 50 IN T.15 S.12 E. OF THE W.M., CLACKAMAS COUNTY, OREGON, BOUNDED AND DESCRIBED AS FOLLOWS: TO-WIT:

BEGINNING AT THE INTERSECTION OF THE EASTERLY BOUNDARY OF THE EAST PORTLAND-OREGON CITY HIGHWAY WITH THE NORTH BOUNDARY
OF THE WILLIAM MEEZ DONATION LAND CLAIM NO. 50, IN SECTION 78, T.15 S., R.1 C. OF THE W.M., WHICH POINT BEARS NORTH 6° 1' EAST 916.28 FEET DISTANCE
TO THE RE-ENTRANT CORNER OF SAID LAMP; THENCE NORTH 85° 13' WEST TO THE NORTHERN BOUNDARY OF THE WILLIAM MEEZ DONATION LAND CLAIM, A
DISTANCE OF 3643.27 FEET; THENCE SOUTHWEST ALONG THE ARC OF A CURVE, TO THE RIGHT HAVING A RADIUS OF 1149.70 FEET THROUGH A CENTRAL ANGLE OF 18° 15'
TO 3 D° 20' EAST 344.27 FEET; THENCE SOUTH AND 16° WEST 600.45 FEET; THENCE NORTH 25° 45' WEST 101.05 FEET; THENCE SOUTH 65° 43' WEST 510.58 FEET;
THENCE TRACING THE EASTERLY BOUNDARY OF SAID HIGHWAY, NORTH 10° 25' SE 307.00 FEET; THENCE NORTH 15° 36' WEST
RE-ENTRANT CORNER THEREOF; THENCE NORTH 15° 15' SE LAST TRACING THE EASTERLY BOUNDARY OF SAID HIGHWAY 1224.00 FEET; THENCE NORTH 05° 25' SE
89° 10' W 445.85 FEET TO A POINT, SAID POINT BEING ON THE EASTERLY BOUNDARY OF THE EAST PORTLAND-OREGON CITY HIGHWAY, THENCE TRACING THE
PLACE OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED, CONTAINING 18.77 ACRES AND EXCEPTING THEREFROM THREE PARCELS OF LAND
VOL. _____ PAGE ____ CLATSOP COUNTY, OREG. RECORDS OF PLATTING, ALSO THE ACES, PAGES 391, ALSO VOL. 44, PAGE 18.

Vol. _____ Page ____

PAGE TWO OF TWO.

Parcel No 2

A PART OF THE WILLIAM MEER DONATION LAND CAN BE FOUND IN TOWNSHIP 1 SOUTH RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT:

[illegible][illegible]

IN WITNESS WHEREOF, THIS INSTRUMENT HAS BEEN EXECUTED THIS 17th DAY OF March 1914.

STATE of CALIFORNIA }
CITY of SAN FRANCISCO }

UNITED STATES OF AMERICA
ACTING BY AND THROUGH
PUBLIC HOUSING ADMINIS
BY *[Signature]*
FIELD OFFICE DIRECTOR

On this 12th day of December, 1952 before me, ALBERT H. MCGEE, a Notary Public in and for the State of California, personally appeared J. S. McFETTER, to me known to be the ALLEGED person against whom the Public Housing Administration of the United States of America, had recommended the Income Taxpayer in the Tax and Volunteer Act and does of the United States of America and on oath sworn that he was authorized by Law to execute and Sub Public in witness whereof, I have hereunto set my hand and seal the 12th day of December 1952 at Los Angeles, California.

ACCEPTED THIS 11th DAY OF February, 1952.

CITY OF MILWAUKEE, WISCONSIN.

NOTED: 4/15/2011 11:11
By: [Signature] 15/11/2011

May 19
1957

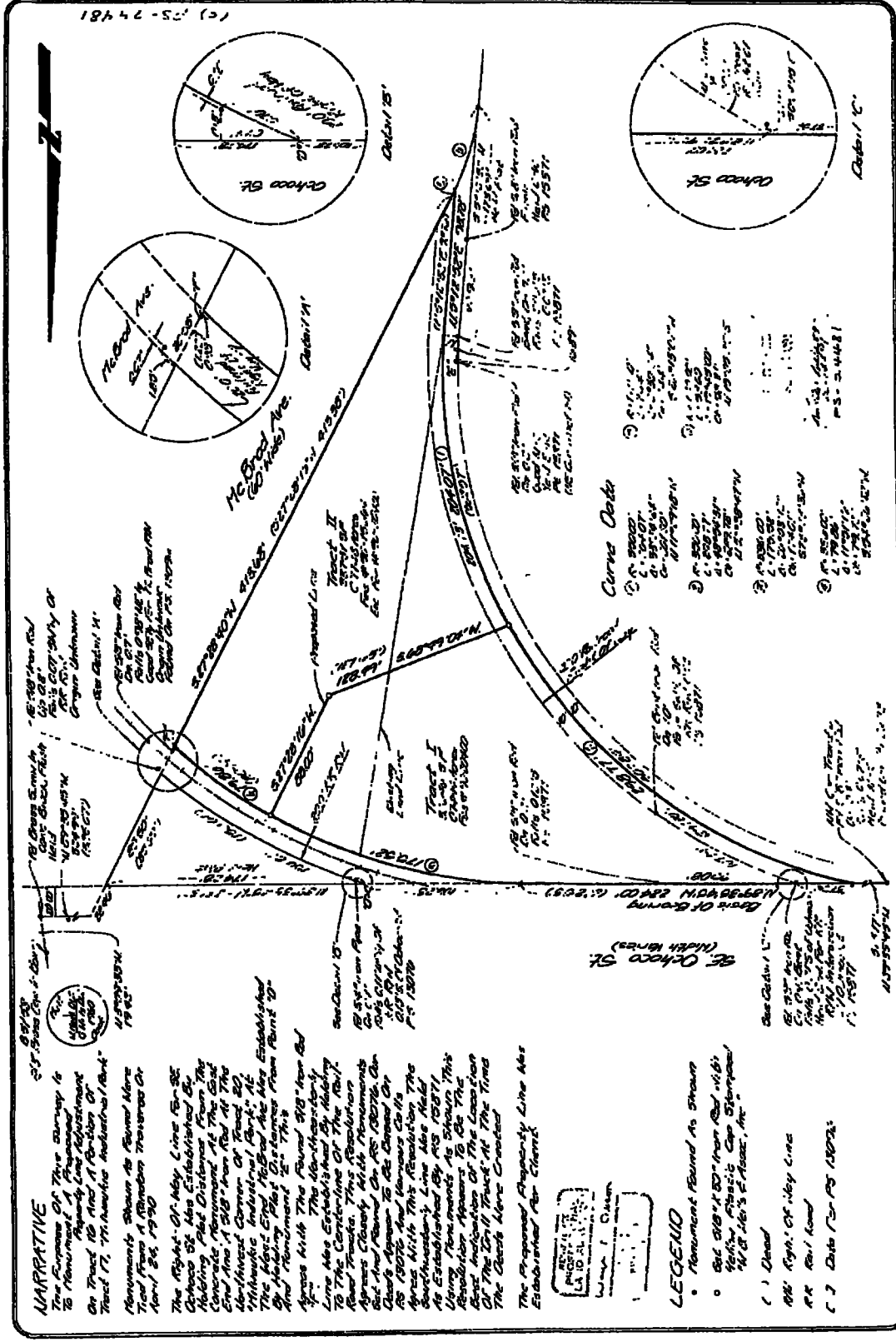
Yates December 3 and 1962,
GATC=

William B. Hall

County of San Diego

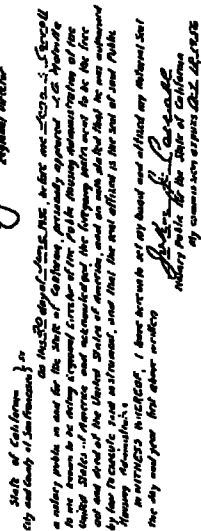
✓ SOUTH AFRICA

Exhibit C
Page 3 of 9



PROPERTY LINE ADJUSTMENT

DESIGNED	1/8	ESTIMATED IN THE DISTRICT OF COLUMBIA
REVISED	1/10	COUNTY OF CLACKAMAS STATE OF OREGON
DRAWN	1/10	IN THE WILLAMETTE METROPOLITAN DISTRICT
DATE	1/10/81	BASED ON RECORDS, AND OF WILLAMETTE INDUSTRIAL DISTRICT
DRAWN BY	1/10/81	
SCALE	1/10	
FILE NO.	1/10	
REVISED	1/10	



Subscribed and sworn to before me this 13th day of August
1965 at New York, N.Y.
R. L. Sythe
Notary Public for State of New York
My Commission expires 12-31-67

1. Earl B. Marshall, Army last July 1949
1949 and my first "no smoking policy" is on
last copy of the original copy of minutes industrial part

[illegible]

RECORDED PLAT
TRACTS 10 TO 20 INC.
MILWAUKIE INDUSTRIAL PARK
MILWAUKIE, CLATSOPAS COUNTY, OREGON.
Surveyed by Marshall Inc.
Book 38, Page 41
June 1956.

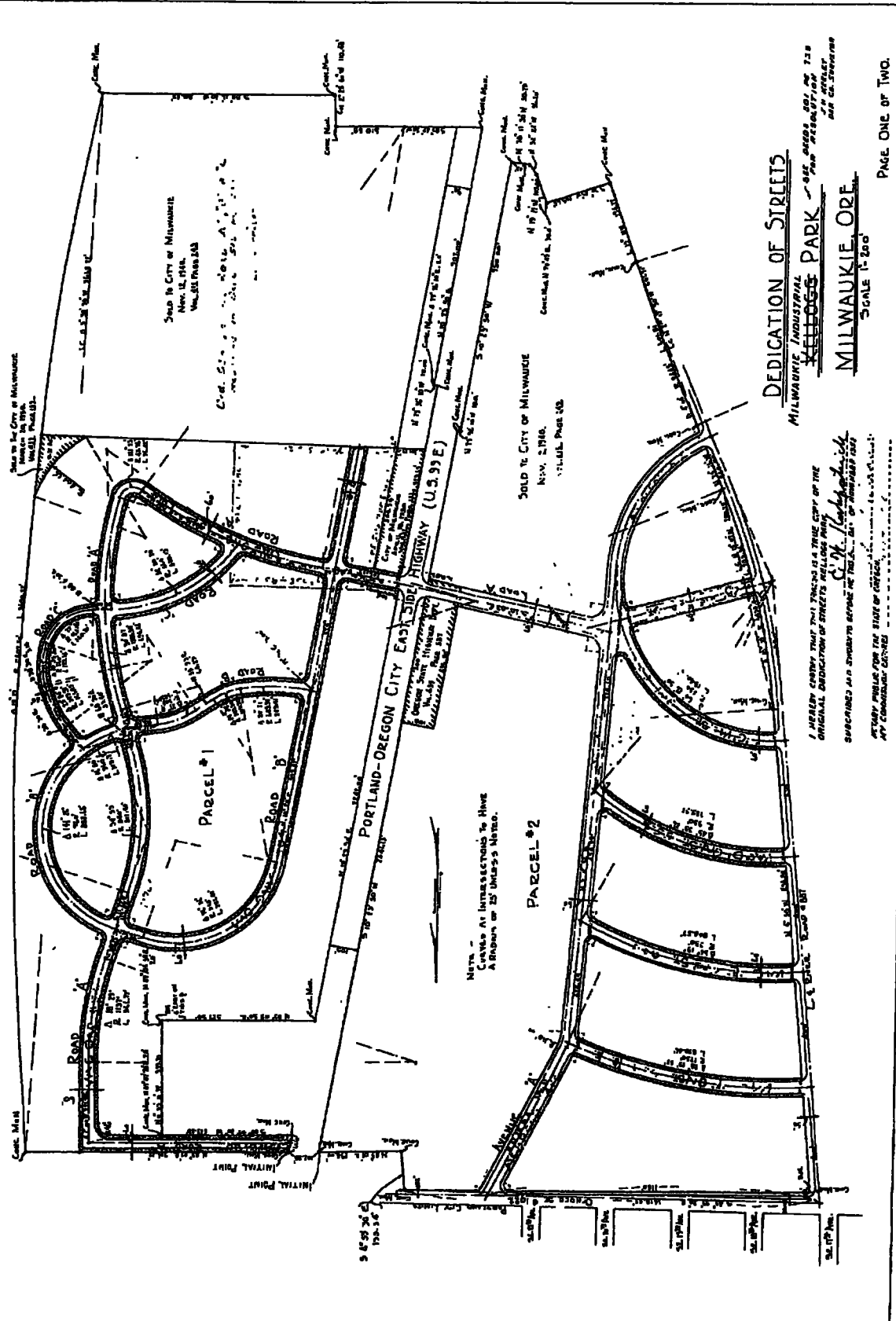
Page 2 of 2
Date 4/20/82 JS



RM Schleining
OREGON
OCTOBER 30, 1988
ROBERT M. SCHLEINING
486

**4230 N.E. FREMONT STREET
PORTLAND, OREGON 97213
Phone: 284-5896**

26/13



729

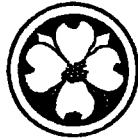
Milwaukie Municipal Code[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[TITLE 8 HEALTH AND SAFETY](#)[CHAPTER 8.04 NUISANCES](#)**8.04.120 SCATTERING RUBBISH AND COMPOSTING**

A. No person may throw, dump, or deposit upon public or private property any injurious or offensive substance or any kind of rubbish, trash, debris, or refuse which would mar the appearance, create a stench, or detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle, or person traveling upon a public way.

B. No person may compost materials which either cause offensive odors, or create a health hazard, or are capable of attracting or providing food for potential disease carriers such as birds, rodents, flies, or other vectors. (Ord. 1758 § 7, 1994: Ord. 1028 § 11, 1964)

Milwaukie Municipal Code[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[TITLE 10 VEHICLES AND TRAFFIC](#)[CHAPTER 10.44 MISCELLANEOUS REGULATIONS](#)**10.44.030 OBSTRUCTION OF TRAFFIC**

Except as provided by this title or any other ordinance of the City, no person shall place, park, deposit, or leave upon any street or other public way, sidewalk, or curb any article or thing or material which in any way prevents, interrupts, or obstructs the free passage of pedestrian or vehicular traffic, or obstructs a driver's view of traffic or official traffic signs and signals. No person shall blockade or cause to be blockaded in any manner any street, sidewalk, or public way, except that a special permit may be obtained from the City Manager or designated appointee when the blockage is determined to be temporary, for a lawful purpose, and will not lead to a breach of peace. (Ord. 1360 § 8(3), 1977)



MILWAUKIE

Dogwood City of the West

October 18, 2011

Oregon Pacific Railroad Co.
Attn: Kelly S. Anable
P.O. Box 22548
Portland, OR 97269

SUBJECT: Ordinance Violations – 8.04.120 & 10.44.030
SITE ADDRESS: 9001 SE McBrod Ave, Milwaukie OR 97222

Kelly S. Anable:

It has come to our attention that there is a violation occurring on the property you own at the above site address. Specifically, the numerous rails, railroad ties, piles of gravel and other large items are being stored in the public right-of-way on SE McBrod Ave are in violation of our Municipal code.

It is the City's policy to provide you with the opportunity to correct these problems before we pursue formal enforcement actions. Please carefully note the following information regarding this matter:

Section 8.04.120 Scattering rubbish and composting.

- A. No person may throw, dump or deposit upon public or private property any injurious or offensive substance or any kind of rubbish, trash, debris or refuse which would mar the appearance, create a stench or detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way.

Section 10.44.030 Obstruction of Traffic

Except as provided by this title or any other ordinance of the City, no person shall place, park, deposit, or leave upon any street or other public way, sidewalk, or curb any article or thing or material which in any way prevents, interrupts, or obstructs the free passage of pedestrian or vehicular traffic, or obstructs a driver's view of traffic or official traffic signs and signals. No person shall blockade or cause to be blockaded in any manner any street, sidewalk, or public way, except that a special permit may be obtained from the City Manager or designated appointee when the blockage is determined to be temporary, for a lawful purpose, and will not lead to a breach of peace.

If compliance is not met a citation may be issued, which would require a court appearance and a possible fine of \$500 per day per violation. No extensions will be given.

To prevent further enforcement action please complete the following no later than **October 28, 2011:**

- Remove all items from the right-of-way.

Thank you for your cooperation. We appreciate your help in keeping Milwaukie clean and livable. This property will be reevaluated for your voluntary compliance by the above-mentioned date. Please contact me if you have any questions or if I can offer you any assistance regarding this matter.

Sincerely,

Tim Salyers
Code Enforcement Officer
503-786-7409
salyerst@ci.milwaukie.or.us

cc: File

POLICE RECORDS

26152A

OREGON UNIFORM CITATION AND COMPLAINT

Use for All Violations or Crimes Where Separate Complaint Will Not Be Filed ORS 153.045 or 153.090

☐ CRIMINAL (See A on Back) ☐ VIOLATION (See B on Back) ☐ OTHER ☐ VIOLATION (See C on Back)

STATE OF OREGON
CITY/TOWNSHIP PUBLIC BODY: MILWAUKIE
COUNTY OF: CLACKAMAS

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:
Name: Last Oregon Pacific Railroad Company
Address: P.O. Box 22548
City: Portland, OR
State: OR
Zip: 97269

AT THE FOLLOWING TIME AND PLACE IN THE ABOVE-MENTIONED STATE AND COUNTY:
On or about 10/9/11 at 11:11
At or near location: 9000 Block of SE McBride Ave, NW

INVESTIGATING THE FOLLOWING:
Type: Accident
Vehicle year, make, model, color, or other, or other, or other: Scattergun Eubank Pen. passing
Other: Obstruction of Traffic

REL. INFO:
1. Violated (See ORS 153.045) Scattergun Eubank Pen. passing
2. Violated (See ORS 153.045) Obstruction of Traffic

OTHER:
1. Intentional ☐ Negligent ☐ Reckless ☐ No culpable mental state ☐ Base First
2. Intentional ☐ Negligent ☐ Reckless ☐ No culpable mental state ☐ Base First

1st Officer Name: T. Salyers
1st Officer ID No.: 9795
2nd Officer Name: T. Salyers
2nd Officer ID No.: 9795

Date: 11/30/11 8:00 PM
City: Clackamas
State: OR
Zip: 97222

POLICE RECORDS

26151A

OREGON UNIFORM CITATION AND COMPLAINT

Use for All Violations or Crimes Where Separate Complaint Will Not Be Filed ORS 153.045 or 153.090

☐ CRIMINAL (See A on Back) ☐ VIOLATION (See B on Back) ☐ OTHER ☐ VIOLATION (See C on Back)

STATE OF OREGON
CITY/TOWNSHIP PUBLIC BODY: MILWAUKIE
COUNTY OF: CLACKAMAS

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:
Name: Last Oregon Pacific Railroad Company
Address: P.O. Box 22548
City: Portland, OR
State: OR
Zip: 97269

AT THE FOLLOWING TIME AND PLACE IN THE ABOVE-MENTIONED STATE AND COUNTY:
On or about 10/9/11 at 11:11
At or near location: 9000 Block of SE McBride Ave, Milw

INVESTIGATING THE FOLLOWING:
Type: Accident
Vehicle year, make, model, color, or other, or other, or other: Scattergun Eubank Pen. passing
Other: Obstruction of Traffic

REL. INFO:
1. Violated (See ORS 153.045) Scattergun Eubank Pen. passing
2. Violated (See ORS 153.045) Obstruction of Traffic

OTHER:
1. Intentional ☐ Negligent ☐ Reckless ☐ No culpable mental state ☐ Base First
2. Intentional ☐ Negligent ☐ Reckless ☐ No culpable mental state ☐ Base First

1st Officer Name: T. Salyers
1st Officer ID No.: 9795
2nd Officer Name: T. Salyers
2nd Officer ID No.: 9795

Date: 11/30/11 8:00 PM
City: Clackamas
State: OR
Zip: 97222



CITY HALL
10722 SE Main Street
Milwaukee, OR 97222

Code Enforcement-Salye
Returns \$ with Request

CERTIFIED MAIL



7010 1060 0000 3708 2456



0-9J52037301
\$05.740
11/01/2011
Mailed From 97222
US POSTAGE

REFUSED
11/2

REFUSED

Oregon Pacific Railroad Co.
P.O. Box 22548
Portland, OR 97269

REFUSED

REFUSED

Refuse

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City of Milwaukie,)	Case No.: 26151A & 26152A
Plaintiff,)	
)	
Vs.)	MOTION, AFFIDAVIT AND ORDER OF
)	
Oregon Pacific Railroad Company)	DEFAULT JUDGMENT
)	
Defendant)	

COMES NOW, Plaintiff, by and through its officer, **Tim Salyers**, and moves the Court for an Order of Default and Judgment based upon the following Affidavit and on the defendant's failure to appear in Court on the **30th** day of **November, 2011**.

T. S.
Officer

AFFIDAVIT

STATE OF OREGON)

County of Clackamas) ss.

City of Milwaukie)

I, Tim Salyers, being first duly sworn, depose and say:

I am a code enforcement officer employed by the City of Milwaukie. Defendant was notified of the violation(s) set forth in the charging instrument on the 10th day of November, 2011.

 in person (or)

 X by first class mail, postage prepaid at the following address:

PO Box 22548, Portland, OR 97269—Certified Mail 7010 1060 0000 3708 2456

The defendant was notified to appear in Milwaukie Municipal Court on said complaint on the 30th day of November, 2011, at 8:00 o'clock a.m., said notice being served

 in person (or)

 X by first class mail, postage prepaid at the following address:

PO Box 22548, Portland, OR 97269—Certified Mail 7010 1060 0000 3708 2456 and defendant failed to appear.

Based on the failure to appear, Plaintiff asks for a default judgment to be entered, taking the charges in the complaint as true.

Dated this 30th day of November, 2011.

T. S.
Officer

Subscribed and sworn to before me this 30th day of November, 2011.



Juli K. Howard
NOTARY PUBLIC - OREGON
My commission expires Jan. 8, 2013
County of Clackamas
State of Oregon

ORDER

Defendant was ordered to appear in court on the charges of:

26151A-1 - 8.04.120A Scattering Rubbish and Composting

26151A-2 - 10.44.030 Obstruction of Traffic

26152A-1 - 8.04.120A Scattering Rubbish and Composting

26152A-2 - 10.44.030 Obstruction of Traffic

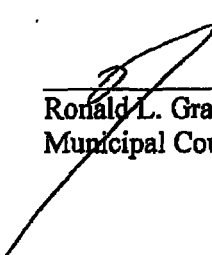
Based upon the above motion and affidavit, and defendant's failure to appear in Court,

IT IS HEREBY ORDERED Defendant's default to be entered of record,

IT IS FURTHER ORDERED Plaintiff shall have judgment against defendant herein in
the sum of \$48,000.00 plus costs and assessments \$200.00.

Total Due: \$ 48,200.00

Dated this 30 day of November, 20 11.



Ronald L. Gray
Municipal Court Judge



December 1, 2011

Oregon Pacific Railroad Company
PO Box 22548
Portland, OR 97269

RE: Citation # 26151A-01, Scattering Rubbish & Composting
26151A-02, Obstruction of Traffic
26152A-01, Scattering Rubbish & Composting
26152B-02, Obstruction of Traffic

The Judge has entered a default judgment on the above mentioned violations. Due to your failure to appear at your appointed court date and time the following fine and assessments have been imposed.

FINE	\$48,000.00
ABATEMENT FEE	\$ 200.00

The total of fines is \$48,200.00 that is due to the court by January 3, 2011. Please note if payment in full are not received by the time frame given, it will result in further action.

Please note that delinquent accounts will be sent to a collection agency for further action. Under HB 2055 ORS 293.231, the court does give the collection agency authority to collect up to 25% interest on the courts behalf. Also, the court can pursue other judgment enforcement options of collecting this fine.

If you have any questions, please contact the court staff.

Sincerely,

Carla Bantz
Court Clerk

26155A

<input type="checkbox"/> CRIME(S) (See A on Back)	OR (Not Both)	<input checked="" type="checkbox"/> VIOLATION(S) (See B on Back)	<input type="checkbox"/> Traffic <input checked="" type="checkbox"/> Other <input type="checkbox"/> Boating <input type="checkbox"/> Commercial Fishing <input type="checkbox"/> Wildlife
--	------------------	---	---

STATE OF OREGON
CITY/OTHER PUBLIC BODY
COUNTY OF
MILWAUKIE
CLACKAMAS
Docket No. 10-2-2012
Court ☒ Municipal ☐ Justice ☐ Circuit ☐ Tribal

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:			
ID No.		State	
ID Type		Tel No.	
<input type="checkbox"/> NON-COL	<input type="checkbox"/> COL		
Name: Last		First	Mi
Address		Oregon Pacific Railroad Company	
P.O. Box 22548		License Class	<input type="checkbox"/> Employed to drive
City		Del Lic	<input type="checkbox"/> Passenger
State		Zip Code	
Portland OR		77269	
Sex	Race	DOB	Height
			Weight
			Hair
			Eyes

AT THE FOLLOWING TIME AND PLACE IN THE ABOVE-MENTIONED STATE AND COUNTY:

Offense Date	Month	Day	Year	Time	AM	PM	Highway	Premises open to public
on or about	11	2	11	12				

At or near Location: 9000 block of SE McBrod Ave, Milwau

Type	Reg/VIN/ID No.	State	<input type="checkbox"/> Accident <input type="checkbox"/> Property Damage <input type="checkbox"/> Driver not Reg. Owner <input type="checkbox"/> Com. Vehicle	<input type="checkbox"/> Injury <input type="checkbox"/> Endangerment <input type="checkbox"/> Hazz/Material <input type="checkbox"/> Com. Passenger
Vehicle year, make, model, style, color, OR Object, describe:				
Other				

DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):									
Description		Alleged Spd		Designated Spd		Pooled Limit		Rider	
Scattering Rubbish & Littering <td colspan="2"></td> <td colspan="2"></td> <td colspan="2"></td> <td colspan="2"> <input type="checkbox"/> Fender <input type="checkbox"/> Pace <input type="checkbox"/> Laser </td>								<input type="checkbox"/> Fender <input type="checkbox"/> Pace <input type="checkbox"/> Laser	
2. Violated (cite ORS OR rule) min C		8.04.20A						<input type="checkbox"/> Paid Sch Zn <input type="checkbox"/> Hwy Wk Zn <input type="checkbox"/> 1. Base Fine \$500/Day	
Description		2. Violated (cite ORS OR rule) min C		8.04.030		plus 1 \$50 Alcoholic Assessment		<input type="checkbox"/> Intentional <input type="checkbox"/> Knowing <input type="checkbox"/> Reckless <input type="checkbox"/> Criminal negligence <input type="checkbox"/> No culpable mental state Destruction of Traffic	
Description		3. Violated (cite ORS OR rule)				plus 1 \$50 Alcoholic Assessment		<input type="checkbox"/> Intentional <input type="checkbox"/> Knowing <input type="checkbox"/> Reckless <input type="checkbox"/> Criminal negligence <input type="checkbox"/> No culpable mental state 1. Base Fine \$500/Day	
Description		4. Violated (cite ORS OR rule)						<input type="checkbox"/> Intentional <input type="checkbox"/> Knowing <input type="checkbox"/> Reckless <input type="checkbox"/> Criminal negligence <input type="checkbox"/> No culpable mental state 1. Base Fine	

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I certify under ORS 153.045 and under applicable law and under penalties for false swearing, do swear/affirm that I have sufficient grounds to and do believe that the above-mentioned defendant/person committed the above offense(s) and I have served the defendant/person with this complaint.		Officer(s) Agency ID CE
Date Issued 12/7/11	1st Officer Signature T. Salyers	1st Officer ID No. 9795
Print 1st Officer Name T. Salyers	Signature T. Salyers	2nd Officer ID No.
Defendant and Officer of Arresting Person (I Not Officer)	Print Name T. Salyers	2nd Officer Signature

YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE

☒ **CLERK OF DISTRICT COURT**
 10722 SE Main St.
 Milwaukie, OR 97222

☐ **CLERK OF COUNTY CLERK COURT**
 8th and Main St.
 Clifton City, OR

Date: 12/14/12 Time: 2:00 p.m.

POLICE RECORDS

Use for all violations of Chapter 22, F.S. (except those noted below)

<input type="checkbox"/> CRIME(S) (See A on Back)	<input checked="" type="checkbox"/> OR (Not Both)	<input checked="" type="checkbox"/> VIOLATION(S) (See B on Back)	<input type="checkbox"/> Traffic <input checked="" type="checkbox"/> Other <input type="checkbox"/> Wildlife <input type="checkbox"/> Boating <input type="checkbox"/> Commercial Fishing
--	--	---	--

STATE OF OREGON
CITY/OTHER PUBLIC BODY MILWAUKIE
COUNTY ACKAMAS

Docket No. _____

Court ☒ Municipal
☐ Circuit
☐ District
☐ Trial

Justice ☐
 Circuit ☐
 Trial ☐

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:									
Name: Last		First	Mi	State	Tel No.				
Oregon		Pacific	Railroad	Company					
Address:									
P.O. Box 22548		State	Zip Code						
City		Portland	OR	97269					
Sex	Race	DOB	Height	Weight	Hair	Eyes			

TIME/PLACE		AT THE FOLLOWING TIME AND PLACE IN THE ABOVE-MENTIONED STATE AND COUNTY:	
Offense Date on or about	Month 11	Day 2	Year 11
At or near: Location:		Time <input type="checkbox"/> AM <input type="checkbox"/> PM	
500 Block of S. McBrad Ave. Milwau		<input type="checkbox"/> Highway <input type="checkbox"/> Premises open to public	

REL. INFO		INVOLVING THE FOLLOWING:		<input type="checkbox"/> Injury <input type="checkbox"/> Entanglements <input type="checkbox"/> Property Damage <input checked="" type="checkbox"/> Driver not Reg. Owner <input type="checkbox"/> Con. Vehicle	
Type	Begin/VIN/ID No.	Status	Accident	<input type="checkbox"/> Injury <input type="checkbox"/> Entanglements <input type="checkbox"/> Property Damage <input checked="" type="checkbox"/> Driver not Reg. Owner <input type="checkbox"/> Con. Vehicle	
Vehicle year, make, model, style, color, etc. Other, describe:					
Other					

DID THEY AND THERE COMMIT THE FOLLOWING OFFENSE(S):		Designated Spd		Prosted Limit		<input type="checkbox"/> Radar <input type="checkbox"/> Prcap <input type="checkbox"/> Laser	
1. Violated (cite ORS/ORD/rule) 10.41.120A	Describe Scattering Rubbish & Composting	Alleged Spd		<input type="checkbox"/> VBR		<input type="checkbox"/> Hwy Wz Zn	
2. Violated (cite ORS/ORD/rule) 10.41.030	Describe Obstruction of Traffic	Alleged Spd		<input type="checkbox"/> No culpable mental state		<input type="checkbox"/> Base Fine \$500	plus \$150 Assessment
3. Violated (cite ORS/ORD/rule)	Describe	Alleged Spd		<input type="checkbox"/> Criminal negligence	<input type="checkbox"/> No culpable mental state	<input type="checkbox"/> Base Fine \$500	plus \$150 Assessment

<input type="checkbox"/> Intentional	<input type="checkbox"/> Knowing	<input type="checkbox"/> Hecceus	<input type="checkbox"/> Criminal negligence	<input type="checkbox"/> No culpable state of mind
				Excl.

<p>I certify under ORS 153.045 and under other applicable law and under penalties for false swearing, do swear/affirm that I have sufficient grounds to believe that the above-named defendant/person committed the above charged and I have served the defendant/person with this complaint.</p>		<p>Officer(s) Agency ID CE</p>	
<p>Date Issued 12/7/11</p>	<p>1st Officer Signature T. Salyers</p>	<p>1st Officer ID No. 9795</p>	<p>2nd Officer ID No.</p>
<p>Print 1st Officer Name</p>		<p>Print Name</p>	
<p>2nd Officer of Arresting Person (If Not Officer)</p>		<p>YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE</p>	
<p>Signature</p>		<p><input checked="" type="checkbox"/> Clatskanie County Courthouse 8th and Main St Astoria, OR 97103</p> <p><input type="checkbox"/> Clatskanie County Justice Court 10817 SE Meadows Blvd Oak Grove, OR 97226</p>	
<p>1/4/12 2:00 PM</p>		<p>JAM City of Milwaukie 10722 SE Main St Milwaukie, OR 97222</p>	

Exhibit H

Page 1 of 1

OREGON PACIFIC RAILROAD
P.O. Box 22548
Portland, Oregon 97269

Phone 503-659-5452
Fax 503-659-6546

December 15, 2011
December 27, 2011

CITY OF MILWAUKIE-Municipal Court
10722 S. E. Main
Milwaukie, OR 97222

To the court:

Re: Citation 26154A
26155A

Via Hand Delivery
Certified Mail 7010 2780 0001 7556 5921


To the above citations, defendant pleads NOT Guilty; please set for trial.

Re: Citations 26151A
25152A

The above captioned citations we intend to appeal to the appropriate court. Please provide appropriate forms IMMEDIATELY; ORS does not require payment of bogus fine to file appeal!

Municipal interference with railroad operations is pre-empted by USC 10501 (b); therefore, the City has no jurisdiction over these matter as they apply to Interstate Commerce.

Regards,


OREGON PACIFIC RAILROAD
Richard Samuels, President

rec'd 12/29/11

)

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, I served a true and correct copy of the foregoing Declaration of Timothy Salyers in Support of the City of Milwaukie's *Complaint for Declaratory Ruling* on:

Richard Samuels
Oregon Pacific Railroad Company
9001 SE McBrod Ave
Milwaukie OR 97222
Facsimile: (503) 659-6546

- ☒ by first class mail, postage prepaid.
- ☐ by hand delivery.
- ☐ by facsimile transmission.
- ☐ by facsimile transmission and first class mail, postage prepaid.
- ☐ by electronic transmission and first class mail, postage prepaid.

DATED: June 26, 2012.



Ronald G. Guerra, OSB # 943272
Attorney for Complainant City of
Milwaukie